

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations)
 (Littlefield, Wolfforth, and)
 Tahoka, Texas))

RECEIVED
 MAY 1 1997
 Federal Communications Commission
 Office of the Secretary
 MM Docket No. 95-83
 RM-8634

COMMENTS ON PETITION FOR PARTIAL RECONSIDERATION

Albert Benavides ("Benavides"), by counsel, hereby respectfully submits comments regarding the Petition for Partial Reconsideration, dated April 21, 1997, filed by 21st Century Radio Ventures, Inc., (21st Century) in the above-captioned matter. Although 21st Century "does not contest" the Commission's ruling which denied its petition to reallocate channel 238C3 from Littlefield, Texas, to Wolfforth, Texas, it does seek reconsideration of the determination not to change the present allotment at Tahoka, Texas.¹

Background

Throughout the entire proceeding, any change in the Tahoka allotment has been understood to be necessitated by, and contingent upon, the Littlefield-to-Wolfforth reallocation. This was because the coordinates for the Wolfforth allotment would be short-spaced to the existing Tahoka coordinates. *See* NPRM, 10 FCC Rcd 6598 (1995).

Benavides filed an application in August of 1995, File No. BPH-950824MC, on a first-come, first-served basis, for a new construction permit on the available Tahoka allotment (channel 237A) after the commencement of the above-captioned rulemaking proceeding. By letter

¹ The two options regarding the Tahoka allocation as presented in the original notice of proposed rulemaking were to either (1) delete the channel 237A allocation to Tahoka or (2) replace the Tahoka channel 237A allocation with channel 278A. *See* 10 FCC Rcd 6598 (1995) ("NPRM"). In the instant Reconsideration Petition, however, 21st Century ultimately asks *only* for a channel substitution at Tahoka and *not* a channel deletion.

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dated November 13, 1996, reference 1800B3-MFW, ("Letter Decision") the Audio Services Division stated that it would "withhold action on Benavides' application until the anticipated Report and Order in MM Docket No. 95-83 is final." That Report and Order, from which 21st Century has filed the present petition, was released March 21, 1997.

Comments

The self-stated basis for the present petition is that 21st Century desires to change the transmitter site specified in its present construction permit. Its new site will be short-spaced to the existing Tahoka allotment on channel 237A. Therefore, 21st Century asks the Commission to sever the Tahoka reallocation from the Littlefield/Wolfforth reassignment plan and substitute channel 278A for the current Tahoka allotment.

As during the docket proceeding, Benavides does not object to the proposed channel *substitution* inasmuch as it would provide a preferential arrangement of allotments. However, any proposal to entirely *delete* Tahoka from the FM Table of Allotments would be unfair, completely unnecessary, and unjustified, and would obviously prejudice Benavides' pending application — particularly in light of the Commission's determination, in the Report and Order, to deny the Littlefield/Wolfforth swap and to leave the Tahoka allocation unchanged.

At any rate, regardless of the Commission's determination regarding the Table of Allotments, the fact still remains that Benavides' first-come, first-served application, which has been ready for grant for almost two years, is still pending. Because the Report and Order has been issued, and the docket proceeding terminated, and because 21st Century's petition ultimately asks only for a channel substitution in the Tahoka allotment, Benavides has a right to have his application processed immediately. Therefore, even if the Commission determines

to act upon the present petition, and orders Benavides to amend his application to conform it to a future reallocation, there is no basis for further delay in granting Benavides' application.²

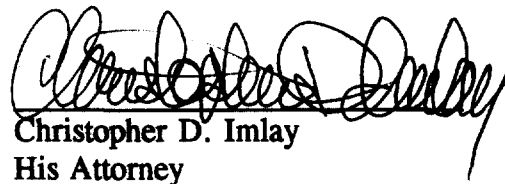
As noted in the Letter Decision at n. 4, should the Allocations Branch ultimately determine to substitute channels in the Tahoka allotment, Benavides will be permitted to amend to designate the new channel without loss of cut-off protection. Such action can certainly be done after grant of a construction permit for the application as it currently stands.

Therefore, because the proceeding for which Benavides' application was suspended has been terminated, because consideration of the present petition does not require further delay, and because no party currently urges deletion of the Tahoka allotment, Benavides respectfully requests that the Commission immediately process his application, File No. BPH-950824MC, and grant a construction permit immediately.

Respectfully submitted,

ALBERT BENAVIDES

By:


Christopher D. Imlay
His Attorney

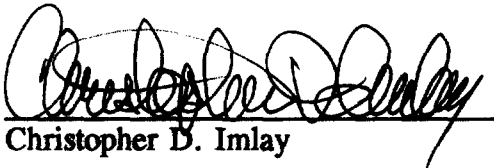
BOOTH FRERET IMLAY & TEPPER, P.C.
1233 20th Street, NW
Suite 204
Washington, DC 20036
(202) 296-9100
May 1, 1997

² 21st Century discusses the history of the Tahoka allotment and notes that there have been multiple opportunities to file for a construction permit, none of which were actively pursued prior to Benavides' present application. In addition, given that the Tahoka allocation was included in the present rulemaking proceeding, 21st Century argues that there is therefore no need for a new proceeding to address any further reallocation. Benavides agrees that no new proceeding should be necessary to either maintain the *status quo* or to replace the current allotment of channel 237A with 278A because doing so would entail no further consideration than was necessary in the docket proceeding. Most importantly, however, Benavides urges that there be no further delay in the processing of his current application.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS ON PETITION FOR PARTIAL RECONSIDERATION** was mailed, postage prepaid, this 1st day of May, 1997, to the following:

James L. Primm
President and Counsel
21st Century Radio Ventures, Inc.
530 Wilshire Blvd., Suite 301
Santa Monica, CA 90401



Christopher D. Imlay